

**Letter of Findings Number: 04-20110128P
Tax Administration
For Tax Year 2010**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration—Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana retail merchant. Taxpayer failed to timely remit its October 2010 sales tax payment. The Indiana Department of Revenue ("Department") imposed a ten percent penalty. Taxpayer protests the imposition of penalty. This Letter of Findings was written based on a telephone hearing and on the information found in the protest file. Further facts will be presented as required.

I. Tax Administration—Penalty.

DISCUSSION

The Department issued a proposed assessment for penalty for the tax year in question due to Taxpayer's failure to timely remit sales tax held in trust. Taxpayer protests the imposition of penalty and requests a waiver of that penalty. Taxpayer states that it suffered a crash of its computer system and did not realize that it had not remitted its October 2010 sales tax payment until several days after the due date. Taxpayer also states that it has been in business for over two decades and has an excellent sales tax remittance record. Taxpayer believes that these factors establish grounds for waiver of the penalty in question.

The Department refers to IC § 6-8.1-10-2.1, which states in relevant parts:

(a) If a person:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department; the person is subject to a penalty.

...

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

(e) A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.

....

(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Finally, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively

establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer failed to timely remit sales tax held in trust as a retail merchant and so the Department determined that Taxpayer was subject to a penalty under IC § 6-8.1-10-2.1(a)(4). A review of the Department's records establishes that Taxpayer does have an excellent record of monthly sales tax remittance. When considered with the circumstances in this case, Taxpayer has affirmatively established that its failure to timely remit the tax held in trust was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is sustained.

Posted: 09/28/2011 by Legislative Services Agency

An [html](#) version of this document.